



THE LEGAL TAPE

The Newsletter of the Mauritius Bar Association

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Message of the Chief Justice



Office of the Chief Justice

MESSAGE

The Mauritian Bar has always played a prominent role in ensuring that the law is properly applied within the judicial process and that all citizens whose rights are at stake are able to find an effective legal remedy before our Courts.

I welcome the enthusiastic initiative of the Mauritius Bar Association to come up with a newsletter which would no doubt further assist the Mauritian Bar in discharging its responsibility of upholding the Rule of Law in an effective manner.

I note with much pleasure that it is the younger members of our Bar who are the driving force behind the "Legal Tape".

The newsletter offers an innovative platform and an excellent opportunity, in particular to the younger members of the Bar, to bring their valuable contribution to the development and practice of our law.

I wish the way ahead for the "Legal Tape" to be eventful and marked with success.

A handwritten signature in black ink, appearing to read "Asraf Caunhye".

Asraf Caunhye, G.O.S.K.
Chief Justice

11 May 2021



Message of the Chairperson of the Bar Council

It gives me immense pleasure to pen a few words for the first edition of “The Legal Tape”, newsletter of the Mauritius Bar Association. Barristers are having to scramble to adapt to a rapidly changing legal environment. Newsletters are, therefore, more relevant than ever as they allow communication in a personalized way and deliver the right message at the right time. “The Legal Tape” is expected, by selecting the right contents, to keep Barristers and the legal profession as a whole up to date and well informed about recent developments in the law and high-value information.

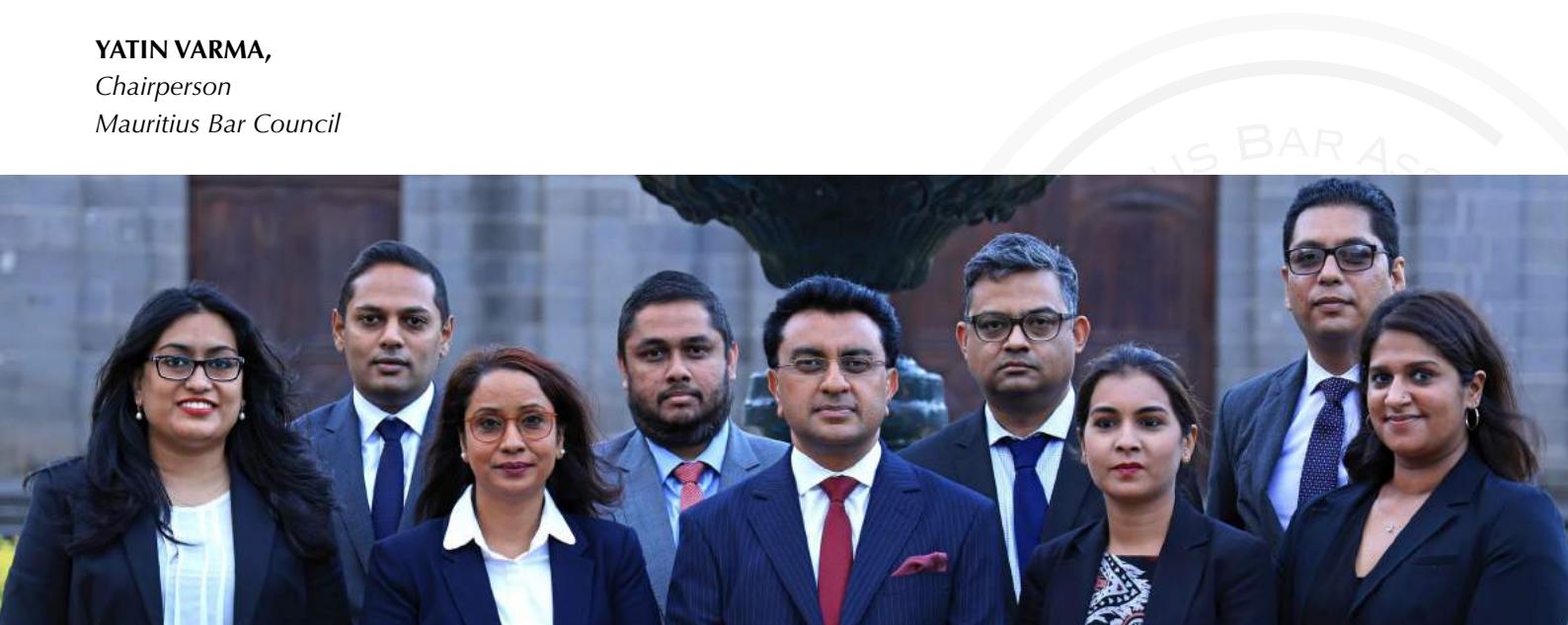
There are now around 1,000 Barristers in Mauritius. This newsletter is a cost-effective tool for building stronger relationships and regular communication within the profession. It will be a powerful medium for demonstrating the profession’s capability. By publishing articles, commenting on important issues within the legal sphere or reviewing recent developments in the law will indicate the profession has a good understanding of the challenges and opportunities it faces. A greater sense of unity will undoubtedly be built by Barristers regularly contributing articles.

A strong and independent Bar is crucial to our democracy. “The Legal Tape” is expected to defend and promote this independence whilst fostering greater unity among Barristers. In a changing society where social media and other forms of communication have taken the centre stage, it has become more than ever relevant to preserve the integrity of the profession. This newsletter is expected to better inform Barristers about the standard that is required from them, in the exercise of their functions.

Being fully aware of the challenges facing the profession, the Mauritius Bar Council has embarked on a number of projects to help and assist Barristers in their work. These will only be possible with the support and collaboration of one and all. It is widely acknowledged that the Bar plays a very important role in the administration of justice. The Bar Council is fully committed to ensuring that Barristers fully play their role. The Judiciary is undertaking a number of steps to shorten delay in the hearing of cases. It is said: delayed justice is injustice. The Bar Council will undoubtedly support any initiative aiming at curtailing delays including those from the hearing of cases up to the time judgments are delivered. This newsletter will also have as objective the promotion of mutual respect between the Bench and the Bar.

I wish to place on record my sincere appreciation and that of the Mauritius Bar Council for the work undertaken by the Young Bar Committee, in making this project a reality. This newsletter will, in many ways, be managed by the younger generation of the profession, reflecting our trust and confidence placed in them. This first edition of “The Legal Tape” contains articles written by younger members of the Bar. However, more experienced Barristers, including those from independent practice, the Attorney General’s Office, the Office of the Director of Public Prosecutions and those in employment, are also invited to contribute as “The Legal Tape” is a newsletter of the profession. I wish this newsletter plenty of success and a long life.

YATIN VARMA,
Chairperson
Mauritius Bar Council



Message of the Young Bar Committee (YBC)

Riddled with challenges and uncertainties, the past year and a half has been particularly difficult for young barristers who were left most vulnerable by the pandemic. This unprecedented conjuncture which resulted in the inability to host physical events however paved the way for "The Legal Tape".

Young barristers, although resilient, are often alone in overcoming the many hurdles they face in their daily practice. "The Legal Tape" represents one of the means by which they can both share their experiences and grievances, and acquire knowledge from fellow members of the Bar. We are accordingly grateful to the Bar Council for its unflinching support and for providing a voice to the unheard youth.

We are equally thankful to Sir Hamid Moellan QC for his invaluable contribution to the profession and the insightful account of his journey.

The YBC is also honoured by the Chief Justice's words of encouragement and recognition. They will only serve as motivation to young barristers who strive to fulfil their ambitions while remaining committed to the highest standards in the discharge of their duties.

It is noteworthy that the YBC has in fact drafted soon-to-be-published Guidelines for Mini Pupils, Pupil Barristers and New Callees which are the culmination of several years of collective effort. They aim to instil a sense of responsibility into the younger generation and to guide them through their first steps into the legal profession.

We furthermore echo the Chairperson of the Bar Council's invitation to all members of the Bar to contribute (financially or otherwise!) to ensure this Newsletter's longevity.

It is our dearest wish that COVID-19 will soon be a thing of the past and we shall be able to welcome all our learned friends and members of the Bench to our events in unity.



Bishan Ramdenee
Chairperson, YBC, Chambers of
Sir Hamid Moellan QC



Sunaina Tapsee
Secretary, YBC, Varma
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Yakshini Peerthum

Attorney General's Office



Pallavi Ramdhian

Chambers



Kurshvin Ragavoodoo

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Editorial Team message

Chères consœurs,
Chers confrères,

Bienvenue à cette première édition du “legal tape” !

Bravo à l'équipe du “Young Bar Committee”, à qui revient l'initiative de faire revivre notre “newsletter”. Les confinements que nous avons tous vécus pendant l'année écoulée n'y sont sans doute pas étrangers.

Pour l'avocat indépendant, que la plupart d'entre nous sommes, vivre deux confinements successifs n'a pas été facile, plus particulièrement pour les jeunes consœurs et confrères. Ce “newsletter” qui arrive à point nommé - car il est à mi-chemin entre une revue de droit et un journal - sera un lieu de rencontre et de partage.

Nous avons voulu pour ce premier numéro des articles d'actualité juridique, tels que la raison d'être d'une enquête judiciaire ainsi que le différend qui oppose Les Maldives à Maurice sur la délimitation du territoire maritime. Nous aurons un aperçu de l'expérience d'un jeune avocat confiné en zone rouge et de celle de notre doyen, Sir Hamid Moollan QC.

Sur une note plus légère, ce numéro contient également un exposé sur certaines particularités de notre droit, des photos de la campagne de vaccination mise en place par notre association afin d'endiguer la pandémie qui touche le monde entier et un mini jeu concours avec des prix pour les trois premières personnes qui donneront les bonnes réponses. Tous les articles sont signés par le jeune barreau.

L'accueil que vous réserverez à ce journal sera déterminant pour sa survie. Celle-ci dépendra également de la contribution qui y feront les uns et les autres. Nous espérons pouvoir le faire suivre par 3 autres éditions d'ici la fin de l'année.

Vous pouvez envoyer vos commentaires, suggestions et articles à l'adresse suivante : mba@mba.intnet.mu

Nous souhaitons une longue vie au “legal tape” et vous souhaitez une bonne lecture.

Narghis Bundhun SC

The Editorial Team



Narghis Bundhun, SC



Arassen Kalle



Anusha Rawoah



Kamlesh Domah



Sir Hamid Moollan, QC, GOSK

Interview of Sir Hamid Moollan QC, GOSK

By Bishan Ramdenee

After his remarkable feat of completing 60 years at the Mauritian Bar, Sir Hamid Moollan QC, GOSK takes a trip down memory lane and shares his view on the legal landscape from the top.

1. How was life as a young barrister when you returned to Mauritius and were called to the Bar in 1960?

There were approximately 40 barristers at the time. The relationship between colleagues was very cordial. I did not encounter any particular difficulty when I started my career. I remember that there was the Bar Party at the time where senior and junior barristers would meet and discuss subjects of interest to them.

The seniors were very strict and had a no non-sense approach to work. You could not slack on the job. When assigned a task, a junior had to complete it diligently or else they would be taken to you.

There were only four judges back then and as junior, it was obviously difficult to approach them. Seniors, however, had a different relationship with them. Each judge had their own temperament and it was important to know how to deal with them. It was stressful to appear before them because they mastered briefs perfectly. You had to be fully prepared to engage with them. If you were bluffing, you would be easily caught out because they had more confidence and conviction than contemporary judges.

2. In January 2021 only, 40 barristers were called to the Bar resulting in a total of almost 1000 barristers in Mauritius. Despite these growing numbers and quite paradoxically, barristers are more than ever facing criticism for their conduct and practice of the law. What is your perspective on today's Bar?

It depends on each barrister and each individual case. Some barristers are more serious than others. Back in the day, you would not be allowed to do anything out of line and you would have to be very careful because there were not as many barristers as nowadays and as I said, judges had a lot more conviction. It seems that regrettably some barristers are more interested in telling stories than presenting their case to the Court.

As for the number of barristers, it is not an issue as once more, the practice of each barrister is different and if they prepare their case meticulously, the numbers are irrelevant.

3. A barrister has an overriding duty to the Court which includes ensuring the proper and efficient administration of justice; assisting the Court in the administration of justice; and not deceiving or knowingly or recklessly misleading the Court. Having appeared before illustrious judges throughout your career, what should be, according to you, the relationship between the Bar and the Bench?

I have indeed had the privilege of appearing before distinguished judges in the Judicial Committee of the Privy Council and Supreme Court of Mauritius. I have also been lucky to have always encountered fair judges who were willing to hear my arguments before reaching a conclusion and delivering their judgments.

The relationship between the Bar and the Bench should be respectful. Each judge or magistrate has a different character and the same applies to barristers. The latter's role is to present their client's case to the Court. They have a right of audience and must be heard first before the Court makes a decision. However, that right has its limitations. Barristers must prepare their case assiduously and explain their arguments coherently to the Court. It may well be that the Court disagrees with counsel and vice versa. However, it does not prevent either one to courteously and politely advance their points of view.

4. You have mentored innumerable barristers who became judges, magistrates, senior counsel or have occupied other important institutional posts. How essential is it for a barrister to have a mentor or role model?

It is as important for young barristers to have a mentor as it is essential for seniors to support juniors. The junior needs to learn how to understand and prepare a brief and identify its strengths and weaknesses, for a barrister has to advocate persuasively to the Court without misleading it. The importance of honesty cannot be overemphasised. I expect impeccable professional conduct. You may disagree with the judge or your opponent but it is your duty to explain the reasons for the lack of consensus. During my career, I have always worked with juniors. They

would be handed the same file as me and would prepare the case independently. We would then have on average two sessions to share opinion and ascertain which one is more compelling. Juniors must be ready to conduct the case themselves and if they are requested to argue a point, they must be able to do it. They are very often right in their argument and if there were diverging perspectives, I would not disregard them but give them the opportunity to convince the judge themselves.

Seniors who think that they do not have sufficient time for juniors should look at it in a different way. Juniors are of great assistance and in many cases, do most of the work.

5. Many barristers, both young and not so young, aspire to be the next Sir Hamid Moollan QC, what does it take to be the next Sir Hamid?

(laughs)

You can either be yourself, use your name and capacity to advance your arguments or imitate another person. It is a matter of personal choice if one sees another person as an example but I doubt the usefulness of imitating or mimicking someone else.

I reiterate that our job is to present our case convincingly to the Court. But before convincing the Court, you need to convince yourself. Knowing what to say and how to say it demands a deep understanding and preparation of your brief. Do not attempt to trick your client or the judge. If others do not agree, try to understand their perspective and if you still disagree, provide your reasons. And if you are wrong, admit it. There is no shame in being wrong.

6. Your accomplishments are second to none, yet you remain humble and down-to-earth. Firstly, is it hard to deal with success? And secondly, although one can hardly recall any setback that you have experienced in your career, do you or would you cope with failure in the same way as success?

First of all, none of the accomplishments was achieved on my own. I had the support of several individuals who have surrounded me over the years.

Success for me simply means persuading the Court. I do not think of anything else. Success is a concept that is in the mind of others: they perceive you as successful. I have always focused on the job that I had to do, which was to convince the Court of my arguments, and nothing else.

I use the same logic when it comes to failure. If the Court's decision is against my client, it simply means that I have not been able to convince the judge and I move on to the next case. I can appeal but I do not believe in individualising and personalising a case. I also do not categorise judgments as wins and losses.

7. For young barristers, particularly self-employed ones, one major issue they have to deal with is money or the lack of it. What is the approach that they should take towards money?

The fees that a barrister can charge will depend on themselves and the case they are dealing with.

If you are having financial issues, you need to find a way to solve it without engaging in any unlawful practice. I have always tried to help juniors who have shared their hardship with me, and money is no exception. I recall a junior who came to me as they thought that the client had not been paying reasonable fees. We swiftly found a compromise in the interest of all parties.

Money only becomes a problem if the junior says that it is one. In civil matters, they can hence approach their instructing attorneys who must help them. If they work with a senior, they should make the latter aware of their problems as they have greater means to assist juniors and alleviate their financial burden as I did in my time.

8. The schedule of a barrister can be very busy and energy-draining to such an extent that it can jeopardise one's mental and physical health. How did you cope with work pressure?

Time management is key when dealing with work pressure. I did not have a particular way to combat stress. I planned my work in advance. For instance, I would always ensure that I had a whole week available to prepare my case, whether in the Supreme Court or Privy Council.

9. Is it realistically possible to excel as a barrister and achieve a work-family balance?

I personally never mixed professional life with private life. However, we form part of society and to achieve that balance, as difficult as it might be, we must somehow find time to spend with our close ones. It is important not to impose anything on others and I am grateful to my family as they allowed me the opportunity and time to work. We did it together.

10. Sir Hamid, if you could go back in time and do one thing differently, what would it be?

I would not want to change anything. I always tried my best to discharge my duties the right way; prepare every case to the best of my abilities and argue every one in the way I thought was best in the circumstances. This is what is expected of present and future generations of barristers.

*Judges are not like pigs, hunting for truffles buried in briefs.
— Justice Posner, United States v. Dunkel, 927 F.2d 955, 956 (7th Cir. 1991)*



Judicial Inquiries 5 Things To Know

By Anusha Sheila Aubeelack

The unexpected resurgence of local COVID-19 cases forced the nation into another lockdown and resulted in the suspension of normal court business until further notice. Shortly before then, laypersons and barristers alike had been focusing an unprecedented level of attention on the developments in a judicial inquiry which was being widely covered by the media. Here are 5 things to know about the legal characteristics of judicial inquiries in Mauritius, while we wait for the findings!

No. 1.: Why are the inquiries “judicial”?

Some deaths are described in our legislation jurisdiction as being violent¹ or suspicious. These would include cases in which a person has died at the hands of another, has committed suicide, has been killed by an animal, machinery or an accident, has died in prison or whilst being in Police custody, and where the circumstances surrounding the death raise reasonable suspicion that some person has committed an offence. When identified as such, these deaths are judicially inquired into.

What makes an inquiry “judicial” is the fact that it is led by a representative of the judiciary, i.e. a Magistrate. Certain aspects of a judicial inquiry markedly differ from normal trials - the inquiry takes on an investigative character, there is an absence of an accused party and the Court’s findings are neither enforceable nor binding. These perhaps beg the question as to why then Magistrates have been the ones chosen by the legislator to lead judicial inquiries.

Undeniably, Magistrates have skills that help in leading such inquiries. They have the capacity to absorb and process impartially large volumes of information which might be placed before the Court. They have the duty to exercise the same independence of mind, disengaged from political concerns, as they would at any time in their

courtroom during trials. Given their legal background and experience, Magistrates also understand the rights of witnesses, are able to assess their credibility and can ensure the procedural fairness of the inquiry. Most importantly, Magistrates occupy positions which inspire trust and confidence in the public. Their presence legitimises the inquiry.

No. 2: The Statutory Landscape

In our jurisdiction, the statutory provisions relating to judicial inquiry, can be said to be skeletal. They might even have a bit of dust on them, having remained effectively unrevised for years. The most relevant piece of legislation to turn to in order to understand judicial inquiries is the **District and Intermediate Courts (Criminal Jurisdiction) Act 1888** (the “Act”).

Section 110 of the Act provides that a Magistrate, when informed of a suspicious or violent death, shall proceed to the examination of the body or order an officer to do so and an investigation of the matter is held with the assistance of a medical practitioner. As per **section 50** of the same Act, inspections and post-mortem examinations can be made or be caused to be made by the Magistrate. Judicial inquiries under this section are made *proprio motu* by the Magistrate.

Section 111 (1) of the Act confers authority on the Director of Public Prosecutions (the “DPP”) “to require the Magistrate to hold an inquiry into the cause of the death and circumstances connected with it, and thereupon, the Magistrate shall hold such inquiry and shall proceed to take the depositions of those who know the facts and circumstances of the case”.

Regrettably, sometimes the findings of judicial inquiries are summary and solely establish whether there has been foul play or not. It seems to be under-recognised that the purpose of these inquiries is to establish not only the presence of this element but also to uncover the truth as to what brought about the death of the person and how and why he met such an end. These truths are essential to justice and their discovery often means that a searching, painstaking and lengthy inquiry is necessary.

‘Connecting the dots’, pursuing relevant lines of questioning to smooth out the jagged picture that multiple depositions from several witnesses from various walks of life may otherwise form, ‘following the money’ as it courses its way through different bank accounts and is laundered in the most ingenious manners, are only some of the factors with the potential to slow down an inquiry. The more time a judicial inquiry takes to be completed, the more it will inarguably consume large sums of taxpayers’ money in the process. Yet, while speed can be a Magistrate’s best friend

as it can be synonymous with securing time-sensitive evidence for instance, it can become his worst enemy in a judicial inquiry. Undue speed could cause material evidence to be interpreted wrongly or to simply be overlooked. Ultimately, this would result in an incomplete picture of the death which then would lead to incomplete findings.

No.3: The Role of the Prosecutor

By way of an authority duly signed by the DPP, a Magistrate is requisitioned to conduct an inquiry into suspicious or violent deaths, in accordance with **section 111** of the Act.

Upon the filing of this authority, the DPP also files a list of witnesses. During the course of the inquiry however, should the representative of the DPP, deem that additional witnesses are needed, he may move to amend the list of witnesses to include them. This motion is usually acceded to by the Court which will recognise that the Prosecution has the carriage of proceedings. As such, the Prosecution is entitled to use its discretion in selecting which witnesses to tender, to call or not to call and in which order to call them (**Barbeau v/s R [1988 MR 247]**).

Just as the DPP has the power to institute a judicial inquiry under this section, he correspondingly has the power to discontinue it at any moment by filing the relevant signed authority.

The role of the Prosecution in a judicial inquiry is to help the Court by tendering and questioning witnesses whom, it is believed, have information relevant to establishing the cause of death or the facts surrounding it.

No. 4: Witnesses in Judicial Inquiries

During the judicial inquiry, as per **section 46** of the Act, each witness deposes in turn, his deposition is taken down in writing by one of the clerks and it is then read over to him and signed by the witness himself, the Magistrate and the clerk. Should the witness suffer from an incapacity preventing him from signing or if he plainly refuses to do so, the fact shall be recorded by the Magistrate and the clerk.

It is important to highlight that **section 10 of the Constitution**, which contains a series of provisions relating to the procedural rights of an accused party to a fair trial, does not find its application in cases of judicial inquiry as there is, in fact, no Accused! Therefore, instead of being reminded by the Court of the right to remain silent as per **section 10 (7) of the Constitution**, as is usually done with an Accused at trial stage, a witness in a judicial inquiry, especially if he has no Counsel holding a watching brief on his behalf, is informed of his privilege

against self-incrimination. A witness is not obligated to answer a question which, in the Magistrate's appreciation, would expose him to potential criminal charges. If, in the Magistrate's opinion, there is no real and appreciable danger of the witness exposing himself in answering, the claim to privilege may be disallowed.

Section 111 (2) of the Act requires that all witnesses be liable to penalties should they fail to attend court when summoned and where they give false evidence during the inquiry while **section 111 (3)** requires that the inquiry be held in open court. When summoned and questioned, a witness can reasonably expect to come under public scrutiny as the inquiry is held in public view. Should the witness feel that he faces any sort of danger because of his involvement in the inquiry, he can request the Court for police protection.

No 5: What Happens Following the Findings?

Once the Magistrate is ready with the findings in a judicial inquiry, held either proprio motu or upon the request of the DPP, these are sent to the Office of the DPP for consideration. The Office of the DPP can, in light of these findings, decide that no further action is required or take steps to formally charge a suspect in view of prosecution.

A judicial inquiry is, in its essence, a search for the truth. Its success depends heavily on the people involved in the process - be they the witnesses, Counsel holding watching brief for any of them, the court staff, the representatives of the DPP or the Magistrate. Whether the truth is finally uncovered depends on their character, their independence, their commitment to integrity and to honour. It should not be forgotten that the victims, whose deaths are investigated during judicial inquiries, had faces and families. Our criminal justice system owes it to them to try as hard as it can not to let their deaths go unexplained and unpunished.



Illustration



Odd Legal Facts Did You Know?

By the Young Bar Committee

In Mauritius, hundreds of zany and obsolete laws still exist and some of them continue to slip through the cracks of the legal system. These laws give us a unique look into history and human behaviour at the time. As courts cannot assume the mantle of Parliament, these are matters best left to the Mauritian legislator. But we wish to just highlight a few:

1. Did you know that killing your spouse for sexual infidelity is excusable?

Section 242 of the Criminal Code states the following: "Manslaughter committed by any person on his spouse as well as on his accomplice, at the very moment he finds them in the act of adultery is excusable". Interestingly, the Discussion Paper by the Law Commission on the "Reform of Law of Willful killing in the Criminal Code" highlights that Section 242 of the Criminal Code was inspired by Article 324 of the ancient French Penal Code of 1810, which took roots from the Catholic footprints embedded in the old French Criminal Code where the sanctity of marriage was of paramount importance. One can only wonder whether such an antiquated section still finds its place in our society where it is hard to believe that possessiveness and jealousy could be acceptable justifications for killing!

2. Did you know that an animal as per our Code Civil Mauricien (CCM) is considered to be a "meuble"?

Article 528 of the CCM states that "Sont meubles par leur nature, les corps qui peuvent se transporter d'un lieu à un autre, soit qu'ils se meuvent par eux-mêmes, comme les animaux, soit qu'ils ne puissent changer de place que par l'effet d'une force étrangère,

comme les choses inanimées". Unfortunately this was inspired by the Old French Civil Code. However, in France, the Civil Code was amended in 2015 and the **Articles 514-515 of the French Civil Code** now recognise animals as "*des êtres vivants doués de sensibilité*". This symbolic measure has been positively welcomed by animal associations and lovers who view this as a first step towards changing the place given to animals in our society.

3. Did you know that in the case of **Charrie vs Charrie (2018 SCJ 75)**, the appellant husband, who had duly declared the second child of his marriage as his legitimate daughter, discovered that he was not the biological father as he noticed that she looked like a Sino-Mauritian when neither spouse was even remotely of Chinese ancestry?

He had no recourse under the law to not be declared as father anymore as he was time-barred under **Article 316 of the CCM** and the Mauritian courts did not wish to give an *a contrario* reading of **Article 322 Al. 2** as the state of our legislation has not undergone any reform like in France. The absurdity and unfairness to the appellant husband in this case was blatant and profound.

All these laws may have served a purpose at one point in time, though they are now obsolete and anachronistic in today's society. Nonetheless, they remain on the books, past the point of practicality! The bottom line is that laws must evolve in tandem with society to reflect its ideals and principles.

Question time !

Please send your answers on mba@mba.intnet.mu
The answers and the name of the winner will be announced in the next edition.

Theme – Women who held key positions in Mauritius

1. Who was the first woman Barrister?
2. Who was the first woman Judge?
3. Who was the first woman appointed Attorney General?
4. Who was the first woman elected as Member of Parliament?
5. Who was the first woman appointed as Minister?



Mauritius v Maldives: The Shackles of the Colonial Era Re-Explored

By Anji Faugoo-Boolell

Mauritius has, in recent times, made generous use of international law to further its claim to the Chagos Islands. From the UNCLOS Arbitral Tribunal in 2015 to the ICJ's historic 2019 Advisory Opinion, Mauritius has been progressively securing important legal conquests in its territorial and maritime disputes against the colonial vestiges of the United Kingdom. In February 2020, the United Nations, returned the Chagos Islands to Mauritius in its latest map of the world following the ICJ's Advisory opinion holding (para. 177) that 'the United Kingdom's continued administration of the Chagos Archipelago constitutes a wrongful act entailing the international responsibility of that State' which is of a continuing character. Then it goes on to say, (para. 178): 'Accordingly, the United Kingdom is under an obligation to bring an end to its administration of the Chagos Archipelago as rapidly as possible, thereby enabling Mauritius to complete the decolonization of its territory in a manner consistent with the right of peoples to self-determination.'

The most recent judicial victory for Mauritius with the purpose of reclaiming Chagos is the decision of a Special Chamber of the International Tribunal of the Law of the Sea (ITLOS) on a maritime boundary dispute between Mauritius and Maldives. Mauritius brought proceedings against the Maldives in 2019 to delimit the maritime boundary between the Chagos Archipelago and the southernmost isle of the Maldives. Maldives raised five preliminary objections in order for the Special Chamber to declare that for lack of jurisdiction, the claims submitted by Mauritius are inadmissible. At the core of the Maldives' Preliminary Objections, was that a prerequisite for the determination of Mauritius's

claims for maritime delimitation would be a decision by the Tribunal on the sovereignty dispute between Mauritius and the United Kingdom who had also not been made a party to this claim. Therefore, the Maldives submitted that ITLOS did not have jurisdiction to make such a determination.

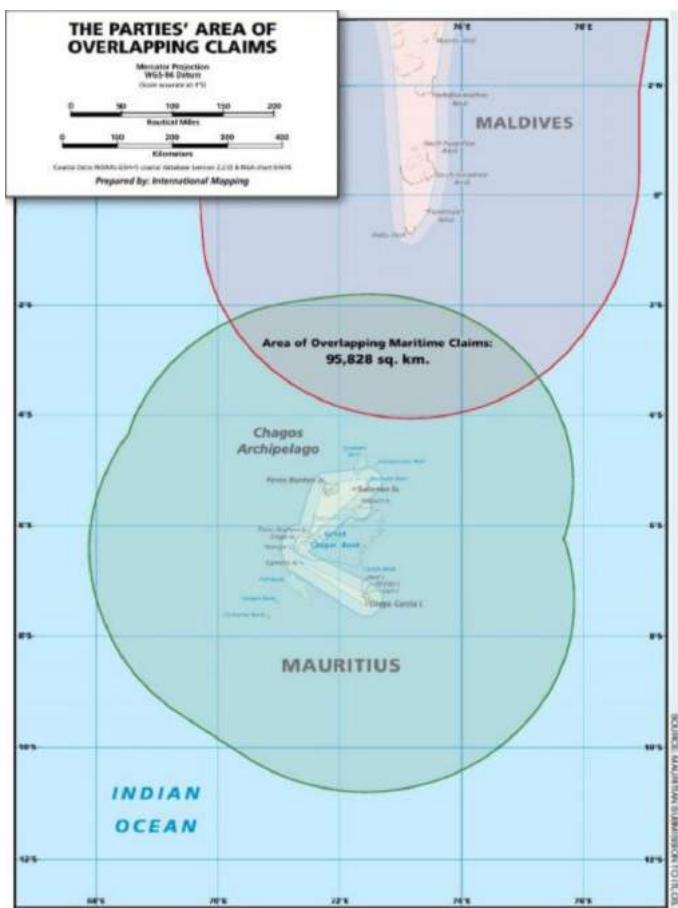
Mauritius, on the other hand, submitted that "in light of the ICJ's Advisory Opinion, there exists no dispute over territorial sovereignty that could prevent the Special Chamber from delimiting the maritime boundary between Mauritius and the Maldives. The legal status of the Chagos Archipelago was authoritatively and definitely settled by the Court's determination that the United Kingdom's detachment of the Archipelago from Mauritius was unlawful, and that its administration is a continuing wrongful act under international law that must be terminated as rapidly as possible." [Mauritius Written Observations before ITLOS]

On 28 January 2021, the Special Chamber of ITLOS, delivered judgment on the preliminary objections and disallowed the Maldives' preliminary objections. It agreed with Mauritius and held that "the determinations made by the ICJ with respect to the issues of the decolonization of Mauritius in the Chagos advisory opinion have legal effect and clear implications for the legal status of the Chagos Archipelago" and that "the United Kingdom's continued claim to sovereignty over the Chagos Archipelago is contrary to those determinations" (para. 246). The Special Chamber also held that, "while the process of decolonization has yet to be completed, Mauritius' sovereignty over the Chagos Archipelago can be inferred from the ICJ's determinations" (para. 246). With respect to United Nations General Assembly Resolution 73/295, the Special Chamber noted that this resolution demanded that the United Kingdom withdrew its administration over the Chagos Archipelago within six months from its adoption. As per the Special Chamber, "the fact that the time-limit set by the General Assembly has passed without the United Kingdom complying with this demand further strengthens the Special Chamber's finding that its claim to sovereignty over the Chagos Archipelago is contrary to the authoritative determinations made in the advisory opinion" (para. 246).

The giant leap taken by the Special Chamber in this matter was the granting of "binding legal effect" to what the Maldives qualified as a non-binding opinion of the ICJ. It is clear that the Special Chamber would not have had the competence to adjudicate on the issue of sovereignty

between the United Kingdom and Mauritius. However, albeit a trite principle that advisory opinions do not have binding force on member states, the Special Chamber recognised that the issue between the United Kingdom and Mauritius had already been legally concluded before the ICJ through its advisory opinion. As seen above, the Special Chamber qualified the advisory opinion as an “authoritative determination.” In taking this approach, the Special Chamber accepted the submissions of Mauritius that “Maldives cannot hide behind fallacious assertions by the United Kingdom that, contrary to the Advisory Opinion, it has “no doubt” about its sovereignty over the Chagos Archipelago. This gives more weight to a defiant political statement by a recalcitrant State than to the Court’s authoritative legal determination of the issue.” Mauritius, in its submissions, went on to quote the position of Justice Nagendra Singh on the legal effect of an advisory opinion who stated that: “the findings of law contained in such [advisory] opinions have of course the authority and prestige of the Court behind them to the same extent as a judgment, and the State which chooses to contravene what has been defined by the Court as a rule of law in an advisory opinion will find it difficult to claim that it is not in breach of international law...”

In his dissenting opinion to the judgment of the Special



Chamber, Judge Oxman finds that the claims of Mauritius

are not admissible due to the ongoing sovereignty dispute between the UK and Mauritius and highlights that: ‘it risks complicating... the exercise by the ICJ of its discretion with respect to requests for Advisory Opinions.’ He is thus effectively questioning the binding nature of the ICJ advisory opinion laid before the Special Chamber as submitted by the Maldives in their written observations: “Mauritius’ case requires the Special Chamber to accept not only that the Court gave an express or implied opinion on the sovereignty dispute, but also that any such opinion was binding on the United Kingdom (and the Maldives). This proposition is, of course, manifestly wrong.”

Nonetheless, only time will tell whether this form of judicial activism will be upheld by the ICJ itself or will be followed by other judicial bodies. The ICJ, being the principal judicial organ of the United Nations, might seize this opportunity to assert its authority in the realm of international law as a major criticism of International Courts has always been that they are ineffective players in achieving international peace and security, fundamentally because of the discernment that they are incapable of controlling state behaviour. Thus, despite the likelihood that States will continue to reduce the scope of the ICJ’s advisory opinions as the Maldives attempted to achieve before the Special Chamber, it appears that International Courts do not wish to be plagued with the perception that they have too little power and are moving towards becoming effective tools for resolving inter-state disputes thus forcing for world public order.

The case will now proceed to the determination of the maritime boundary between the Maldives and Mauritius but one should not take these small wins for granted as Mauritius, although small in size, is colossally impacting on and contributing to the legal landscape of international law by slowly changing the course of history through the simultaneous unpacking of the concepts of decolonisation, sovereignty, self-determination and the potential unlocking of the far-reaching powers of International Courts when delivering decisions. Nevertheless, amidst the complexity of all this legal jargon, the United Kingdom still argues that the ICJ’s opinion on self-determination is only advisory and the plight and the moral imperative owed to all Chagossians seem to have been completely overlooked.

In a big family the first child is kind of like the first pancake. If it's not perfect, that's okay, there are a lot more coming along.
— U.S. Supreme Court Justice Antonin Scalia



Plea of a Young Barrister in the Red Zone

By Arshaad Inder

"I'M NOT IN A POSITION WHERE I'VE GOT ANY SAVINGS. I'M FROM A WORKING-CLASS BACKGROUND. I GREW UP ON IN A SMALL VILLAGE IN THE SOUTH OF THE ISLAND, MY MOTHER IS A HOUSEWIFE AND MY FATHER IS A LABOURER AND STILL REPAYING DEBT FOR THE LAW STUDIES OF HIS ONLY SON. I DON'T HAVE ANYONE WHO CAN SUPPORT ME FINANCIALLY."



- A self-employed, young barrister with 3 years' call
Succeeding as a young barrister has never been easy. There has been a whole lot of pain for our young learned friends in 2020 and 2021 due to the ongoing coronavirus crisis especially that we are unlikely to get much help from any of the government's support schemes.

It is often taken for granted that barristers earn substantial legal fees. Is it not that what we hear on the radio, and read in Facebook comments? But one tends to forget that young barristers often do not have a consistent monthly salary. They may earn Rs. 50,000 in a month and only Rs. 5,000 the next, that too in 5 instalments! As a result, long-term savings, or even short-term, for some, are even more challenging. But the challenges to financial planning do

not end here for some barristers – if they are not primarily employed by a commercial institution, but rather choose to have it the hard way and are self-employed.

Mostly paid on a case-by-case basis, inconsistent income is a real issue for self-employed young barristers. It is very difficult for anyone to plan ahead without concrete knowledge of where, or even when, the next pay check will be coming, let alone how much it will be.

Despite this, there are still regular financial commitments that young barristers have. Besides our daily expenses, we also have to include the cost of training with the Institute for Judicial and Legal Studies (IJLS) and Mauritius Bar Association (MBA) contributions, chambers' contributions/rent, transport costs, robing, household bills and tax which are all contributing to put pressure on junior members of Bar and making longer-term planning more daunting.

While some junior barristers are still drowning in university debt, on top of the abovementioned costs, many receive a dash above the minimum wage of Rs. 10,200 in their first five years' standing at the Bar, a period which is known to pave one's way to be a 'successful' barrister.

Cash flow is a significant consideration for young barristers when it comes to setting aside money for the future. Most of our bright callees find themselves facing the prospect of paying back hundreds of thousands of rupees in student debts while also struggling to establish and finance their nascent practices in a fiercely competitive market like ours.

The number of barristers has increased significantly over the past 15 years, so there are now even more people going after the same amount, or even less work. Of course, this does not apply to the few privileged junior barristers who earn well from Day One, merely by being related to or acquainted with senior barristers or by shadowing them in the handful of top sets. Lucky them! And all of the rest wish they were "called with a golden gown...". Faced with such factors, many junior barristers have been forced to look hard at their options and unfortunately some were left with no other alternative than to abandon the profession altogether while others have opted to become employed in-house legal advisors, which obviously is an avenue for young barristers who are struggling to make ends meet and which offers more stability.

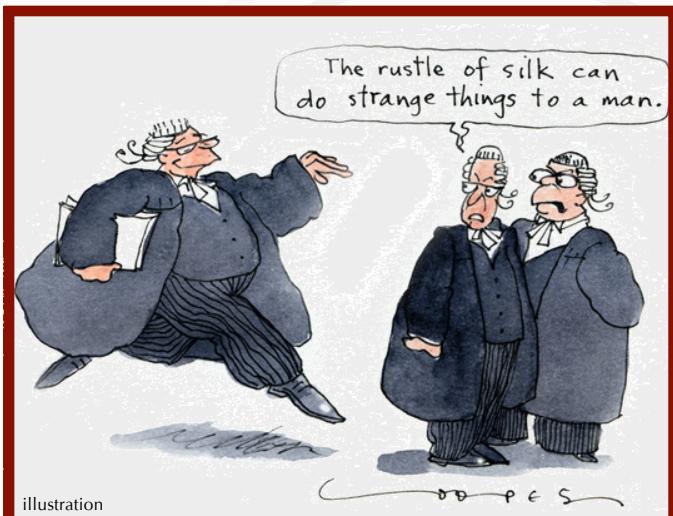


There is a pressing need to address the far-reaching issue of retention. Here are a few of the measures which could be considered to address the abovementioned issues:

- 1) Exemption of every barrister of less than 5 years' standing for the fee of Rs. 5,000 which they ought to pay not later than 31 December, yearly, to the IJLS in respect of the 12 hours' Continuing Professional Development Programme as per the **Institute for Judicial and Legal Studies (Continuing Professional Development Programme) Regulations 2012**;
- 2) Exemption of every barrister of less than 5 years' standing for the payment of the mandatory membership fees to the Mauritius Bar Association as per the **Mauritius Bar Association Act**;
- 3) Waiver of the obligation for barrister of less than 5 years' standing to apply for and pay for a trade license fee as a requisite to the exercise of their profession;
- 4) Compulsory registration of barristers having more than 5 years' standing at the bar, as a registered person under the VAT Act;
- 5) Preferential interest rate on loan for barrister of less than 10 years' standing wishing to set up a chambers/law firm/an office;
- 6) Full exemption from registration duty on the purchase of any property, for the purpose of setting up a chambers/law firm/ an office, by a barrister of less than 10 years' standing;
- 7) Another measure is to build awareness. Barristers must understand their different financial obligations and constraints, cash flow squeezes and even tax commitments before a sustainable plan can be built. One of the measures would be a mentoring programme whereby senior members may share their knowledge to junior members.

Another measure would be for the IJLS:

- a. Conduct seminars where a financial adviser is invited to assist young barristers to assess their financial issues, identifying a long-term goal and tax-planning measures so as to make the most of our irregular income and
 - b. Introduce a module of financial planning in the induction course for prospective barristers.
- 8) Financial assistance from the government to barristers of less than 5 years' standing who could not work because of the COVID-19 curfew restrictions.
 - 9) More transparency in the allocation of legal aid cases and more such cases to be allocated to members of the Bar having less than 5 years' standing and refund of transport costs for legal aid cases;
 - 10) Subsidies helping young barristers by paying part of the cost of their legal research materials including but not limited to books, newspaper and magazine articles, law journals, law reviews, online legal research services such as Lexis Nexis, Westlaw and other information resources.
 - 11) The Bar Council may promote co-working spaces to young barristers, thereby reducing cost of rent and other ancillary costs to renting an office;
 - 12) As a result of financial constraints, mental health of younger members of the Bar is becoming a live issue and the Bar Council may address same by promoting groupw or individual sessions with experts in psychology.





HUMAN NATURE REBELS!

Poor Mr. Wiggles has just been described by a facetious witness of the lower orders as "that there h'old bloke wiv a choker, an' a cauliflower on 'is 'ed"!!!

Appointments of District Magistrates and State Counsel

The Judicial and Legal Service Commission has on the 1st of June 2021 appointed new Temporary District Magistrates, and Temporary State Counsel who have joined the Attorney General's Office and the Office of the Director of Public Prosecutions. They are as follows:

Temporary District Magistrates	Attorney General's Office	Office of the Director of Public Prosecution
Devinash Oozageer	Anekha Punchoo	Beeharry Krishan Mahaveer
Arshaad Toorbuth	Warda Zehra Peerally Sayed-Hossen	Chavrimootoo Mary Chrisinta
Denis Jonathan Vellien	Gavindren Seeneevassen Coolen	Neeha Nowbuth
Lokeshnee Bismohun	Nikheel Bhasant Thakoor	Sakauloo Naazish
Marie Axelle Tania Huët	Priya Emerith	Asiriah Jessie
Yovanee Hansheela Goinden Seeven	Yakshini Peerthum	Ghoorah Anuja
Bibi Azna Bholah	Taroon Pooshpketan Ramtale	Paurobally Bibi Fatimah Sharfa
Marie Valentine Mayer	Nawsheen Maghooa	Chung Kow Cheong Mary Donna
Ibrahim Ikhlass Deeljoor	Akshay Kumar Nundloll	Veerapatren Letizia Yovila
Ameerah Dhunnoo	Gitika Sweta Manna	Jeerasoo Yanish Rao
	Beebee Waseemah Galamali	Sayed-Hossen Sarah Hanna
	Bibi Adiilah Zohrah Aubeeluck	Mittoo Mohammad Irfaan
	Vishakha Soborun	Mungroo Yashnee
		Vythelingum Devisha
		Khodabocus Umme Fahdiyya-E-Nushaiba

LAWYER: *What happened then?*

WITNESS: *He told me, he says, 'I have to kill you because you can identify me.'*

LAWYER: *Did he kill you?*

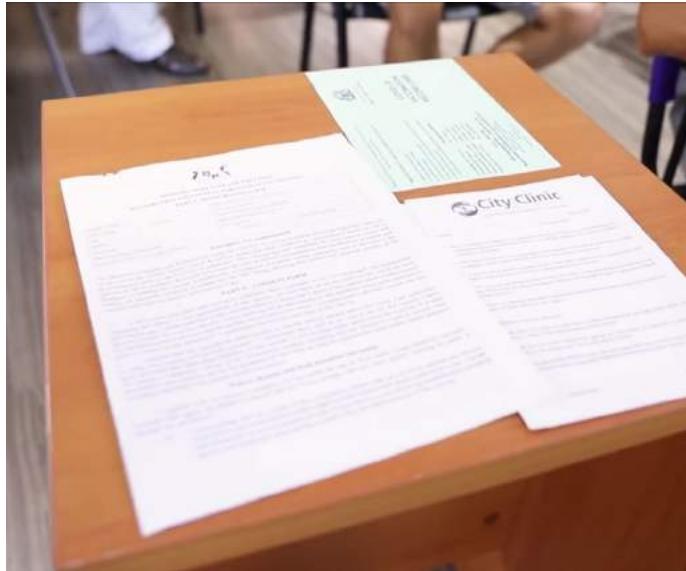
WITNESS: *No.*



Vaccination

Vaccination campaign against Covid-19

Organised by the Bar Council on 18th & 19th March 2021 at City Clinic, Port Louis



Photoshoot

For the "Legal Tape"
Photo Credits: Yahiya Nazroo



Calendar of Events 2021

The following events are on this year's calendar:

Month	Event
July	<ul style="list-style-type: none">Launch of the newsletter, pupil guidelines and new logo of the MBA
August	<ul style="list-style-type: none">Mountain Hike (Le Pouce/Le Morne)Celebrating Sir Hamid Moollan, QC R. d'Unienville, QC & Y. Mohammed, SC diamond jubilee at the Bar, and R. Bunwaree, SC, golden jubilee at the Bar.27.08.2021 – Blood donation at the seat of the MBA
September	<ul style="list-style-type: none">Bowling night & dinner
October	<ul style="list-style-type: none">23.10.2021 – Annual Football Tournament (save the date)Themed Debate
November	<ul style="list-style-type: none">Golf Tournament & Brunch
December	<ul style="list-style-type: none">2nd & 3rd December 2021 – Bar Conference & End of year Bar DinnerCharity lunch & donation

Counting on your support and presence!

ATTORNEY: How was your first marriage terminated?
WITNESS: By death..
ATTORNEY: And by whose death was it terminated?
WITNESS: Take a guess.

!





"All thieves, who could my fees afford,
Relied on my orations,
And many a burglar I've restored
To his friends and his relations!"

W. S. Gilbert



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